

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1053 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

JAKIRKHAN RASIDKHAN PATHAN

Appearance:

PUBLIC PROSECUTOR for Petitioner

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE R.P.DHOLAKIA

Date of decision: 13/04/98

ORAL JUDGEMENT (Per: B.C.Patel,J.)

The State has preferred this appeal against the order of acquittal recorded by learned Addl. City Sessions Judge, Ahmedabad, Court No.10 in Sessions Case No.367 of 1993. The respondent-accused No.1 was tried

for the offences punishable under Secs.498-A and 306 of Indian Penal Cod alongwith two other accused.

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#. It is the case of the deceased in her earlier version that she was beaten heavily with a cricket bat and thereupon she committed suicide by pouring kerosene on her and her husband was watching her burning, but he did not try to save. Her version is not accepted by the learned Addl. City Sessions Judge on appreciation of evidence.

#. It is required to be noted that the prosecution has examined Mohammadhanif Rajak Anzari; Gulamahammad Abdullah ; Ayishabibi Abdul Haziz, mother of deceased-Rani Kausarbanu and Faridkhan Abdulazizkhan, brother of the deceased and all the aforesaid witnesses are close relatives and are the best witnesses to depose about the marital life of the deceased with her husband, respondent-original accused No.1. Though they are the nearest witnesses and neighbours, they have not supported the prosecution version and thus, the prosecution has to rely on the dying declaration recorded by the Executive Magistrate. Learned Addl. City Sessions Judge has discussed that aspect in paragraph 13 as to why the same should not be accepted. Over and above, other reasons given by the learned Addl. City Sessions Judge not accepting the prosecution version is that accused No.1 also sustained burn injuries while saving the deceased and he was admitted as an indoor patient. Allegation was that she was heavily beaten but as no injury was found on the person of the deceased, that part came to be rejected. Learned Addl. City Sessions Judge has discussed in para 12 about signature in declaration, and has come to the conclusion that endorsement to the effect that she could not sign because she had burn injuries, cannot be accepted, in view of other evidences placed before the Court. No positive evidence was placed before the Court that she was unable to sign or put her thumb impression. It is required to be noted that the doctor was not kept present when the dying declaration was recorded. The Executive Magistrate ought to have enquired from the doctor treating the patient whether the patient was in a fit condition to make a dying declaration or not and in absence of this, learned trial Judge has thought it fit not to accept the circumstance against the accused. Learned Addl. Govt. Pleader, Mr. Patel appearing in the matter, argued the matter with record and proceedings with him.

#. This Court has carefully gone through the

evidence which was suggested to be read by learned Additional Public Prosecutor. In an appeal against the order of acquittal, though there is no limitation upon the power of the High Court to review at large the evidence upon which, the acquittal was founded and to reach to a conclusion that the order of acquittal should be reversed, in exercising that power and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the view of the trial Judge as to the credibility of the witnesses; ((2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial; (3) the right of the accused to the benefit of any doubt, and, (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses (AIR 1934 PC 227).

#. We are not discussing the evidence of each witness in detail in view of the observations made by the Hon'ble Apex Court in the case of STATE OF KARNATAKA VS. HEMAREDDY reported in AIR 1981 SC 1417 which reads as under:-

".... This court has observed in *Girija Nandini Devi V. Bigendra Nandini Chaudry* (1967) 1 SCR 93: (AIR 1976 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

#. We are in agreement with the view taken by the learned Addl. City Sessions Judge and in view of the observations made in the above judgment, the appeal is required to be dismissed and is accordingly dismissed.

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